

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ERIC DODGE, an individual,

Plaintiff,

vs.

EVERGREEN SCHOOL DISTRICT NO. 114,  
a public corporation; CAROLINE GARRETT,  
an individual; and JANA E GOMES, an  
individual,

Defendants.

Case No. 3:20-cv-05224-RBL

**FIRST AMENDED COMPLAINT**

Jury Trial Requested

Plaintiff Eric Dodge alleges as follows:

**INTRODUCTION**

1. As recognized by the Supreme Court of the United States: “Speech by citizens on matters of public concern lies at the heart of the First Amendment, which was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.” *Lane v. Franks*, 573 U.S. 228, 235 (2014) (internal quotation omitted).

2. This constitutional right to freedom of speech also protects individuals who are employed by governmental entities: “public employees *do not renounce their citizenship* when they accept employment, and this Court has cautioned time and again that public employers may not condition employment on the relinquishment of constitutional rights.” *Id.* (italics added).

1 Thus, when not performing work in their official capacity, such employees remain private  
2 citizens and are free to have their own interests, beliefs, and opinions—including on matters of  
3 politics—without being punished for them by their public employers and supervisors.

4 3. Plaintiff Eric Dodge was a long-standing and respected teacher employed by a  
5 public school district in Vancouver, Washington, who was returning to start new duties in a  
6 different middle school following an extended absence to rehabilitate from a stroke, from which  
7 he had finally recovered.

8 4. On his second day back to work, and before students had even returned, Dodge  
9 was verbally attacked and defamed by his new principal for the political opinions he held as a  
10 private citizen—specifically, statements in support of President Trump—which caused not only  
11 emotional devastation to plaintiff but also a recurrence of the debilitating stroke symptoms from  
12 which he had previously recovered. These emotional and physical injuries have caused plaintiff  
13 to be unable to continue his livelihood by working as a teacher.

14 5. Seeking redress, plaintiff filed a complaint about the principal's discrimination  
15 and retaliation with the school district's human resources department, but the HR director  
16 worked closely with the principal behind the scenes to ensure that a predetermined outcome of  
17 "unsubstantiated" was achieved. As part of these efforts, the HR director hired an outside  
18 investigator to look into plaintiff's complaint, but when that investigator returned numerous  
19 findings that were supportive of plaintiff and critical of the principal, the HR director refused to  
20 share any of this information with plaintiff. Instead, the HR director wrote her own report to  
21 provide to plaintiff, in which she misstated and misrepresented the investigator's actual findings  
22 in order to close the investigation as unsubstantiated.

23 6. Plaintiff then appealed HR's determination to the school district's elected board  
24 members, who declined to take any corrective action. Notably, the school district refused to give  
25 plaintiff a copy of the investigator's full report until weeks after the appeal was already over.

7. In engaging in such conduct, defendants have violated plaintiff's constitutional and other legal rights, causing substantial injury and damage to plaintiff, as set forth below:

**PARTIES**

8. Plaintiff Eric Dodge is a resident of Clark County, Washington.

9. Defendant Evergreen School District No. 114 ("Evergreen" herein) is a public-school district and local government entity located in and doing business in Vancouver, Clark County, in the State of Washington.

10. During all relevant times, defendant Caroline Garrett was employed as the Principal of Wy'East Middle School ("Wy'East" herein), one of Evergreen's schools in Vancouver. Garrett is being sued in her individual capacity.

11. During all relevant times, defendant Janae Gomes has been employed as the Chief Human Resources Officer for Evergreen. Gomes is being sued in her individual capacity.

**JURISDICTION AND VENUE**

12. This Court has jurisdiction over the subject matter of this complaint pursuant to 28 U.S.C. §1331 and 28 U.S.C. §1367, and has personal jurisdiction over each defendant.

13. All facts, events, and transactions giving rise to this lawsuit occurred within the geographic environs of the Western District of Washington; thus, venue is proper in this Court pursuant to 28 U.S.C. §1391.

14. All facts, events, and transactions giving rise to this lawsuit occurred within Clark County; thus, assignment is proper in the Tacoma courthouse pursuant to LR 3(d)(1).

15. Plaintiff provided 60 days advance written notice of all state law claims to Evergreen pursuant to RCW 4.96.020.

**FACTUAL ALLEGATIONS**

16. Plaintiff has been involved with Evergreen for most of his life, first as a student and then as an employee for over 17 years.

1           17. Over these years, plaintiff developed a reputation for being an excellent teacher  
2 and coach, known for his genuine concern for the well-being of his students and for the respect  
3 and cooperation he has shown toward his colleagues.

4           18. On October 23, 2017, while working at Evergreen's Mountain View High School,  
5 plaintiff unexpectedly suffered a stroke, which caused numerous symptoms including loss of  
6 strength, loss of coordination, and a verbal stutter.

7           19. Plaintiff took a leave of absence for the remainder of the 2017/2018 schoolyear,  
8 focusing on extensive rehab and therapy in an effort to reach full recovery.

9           20. During the 2018/2019 schoolyear, plaintiff continued with his rehab and returned  
10 to work at Evergreen on a part-time basis as a substitute teacher. By the end of the schoolyear,  
11 plaintiff's stroke-related symptoms had essentially resolved, and he and his physician agreed he  
12 was ready to return to classroom work on a full-time basis.

13           21. Because his former position at Mountain View High School was no longer open,  
14 Evergreen assigned plaintiff to teach Science at Wy'East for the 2019/2020 schoolyear. Plaintiff  
15 was very happy about the prospect of returning to full-time duty as a teacher.

16           22. Outside of work, plaintiff has had many activities and interests. In addition to  
17 being a husband and father, plaintiff has enjoyed reading about and discussing the news and  
18 politics as an informed citizen. He has particularly enjoyed friendly debate and open exchange  
19 of ideas among people with different backgrounds and perspectives.

20           23. Plaintiff identifies himself as politically "independent" but leaning Republican.  
21 He did not vote for Donald Trump in 2016 out of concerns about Trump's character, but as time  
22 passed with Trump serving as President, plaintiff approved of the job he was doing and so began  
23 to be supportive of him.

24           24. Early in the summer of 2019, plaintiff saw a red "Make America Great Again" hat  
25 ("MAGA hat" herein) for sale with an internal tag that said: "Made in China". Plaintiff

1 purchased the hat both because he supported Trump but also because he found it ironic and  
2 humorous that the hat had been made in China.

3 25. During the summer holidays in 2019, plaintiff would at times wear the MAGA hat  
4 while at gatherings or out in the public. He liked to wear the hat as a conversation-starter, with  
5 the idea of explaining that ordinary and normal people support Trump, despite some of Trump's  
6 flaws (as symbolized by the "Made in China" tag in the hat).

7 26. He would also wear the MAGA hat when he was going to be outside on a sunny  
8 day to protect the sun spots on his head from developing skin cancer, as he had been cautioned to  
9 do by his physician in the summer of 2019 after the sun spots had been bleeding. At that time,  
10 the MAGA hat was the only hat owned by plaintiff.

11 27. Plaintiff's first day of work at Wy'East was on August 22, 2019, which was the  
12 start of a week planned for teacher training and preparation, with no students present.

13 28. It was a sunny day, and so plaintiff was wearing his MAGA hat while walking  
14 from his vehicle to the entrance of Wy'East. When he arrived at the front door, he doffed the  
15 MAGA hat, and he did not subsequently wear or purposefully display it while inside Wy'East.

16 29. After completion of a training session, plaintiff was approached in his classroom  
17 by his new principal, defendant Garrett, with whom he had not previously worked.

18 30. Unbeknownst to plaintiff at the time, Garrett had a prior history at Wy'East of  
19 aggressively promoting political ideology and messages within the school, both in her official  
20 and personal capacities, and in creating a fearful and hostile environment with certain staff  
21 members, including creating a double standard for staff whose political views differed from her  
22 own.

23 31. During this first meeting, Garrett voiced her concerns about plaintiff's MAGA  
24 hat. Plaintiff assured Garrett that he was not trying to offend anyone with the hat. Garrett  
25 concluded by stating she wouldn't say he couldn't wear the hat, but that she would advise him to

1 “use his better judgment”, which was a veiled way of stating he should not wear the hat. Given  
2 that plaintiff had never worn the MAGA hat inside of Wy’East, plaintiff reasonably understood  
3 Garrett’s concerns to be directed at the fact that he owned the hat at all and/or that he might wear  
4 it on his personal time.

5 32. The next morning, August 23, 2019, when plaintiff arrived at Wy’East for more  
6 training and preparation, he left his MAGA hat in his car, not wanting to cause any friction with  
7 Garrett and hoping to succeed at Wy’East.

8 33. Around mid-day, plaintiff left Wy’East to attend a training session at a different  
9 Evergreen location. Given that Garrett was not present at that off-site location, plaintiff wore the  
10 MAGA hat in that off-site parking lot while walking to and from his vehicle to the front door,  
11 but plaintiff did not wear it or purposefully display it while inside the building. When plaintiff  
12 returned to Wy’East that same afternoon, plaintiff again left the MAGA hat in his car and did not  
13 wear it or display it at or around Wy’East.

14 34. At no other point did plaintiff wear or bring the MAGA hat with him while on  
15 Evergreen properties. Notably, in a subsequent investigation, Evergreen concluded that plaintiff  
16 had never violated any Evergreen policy or rule in wearing the MAGA hat at any time.

17 35. Back at Wy’East that same afternoon, Garrett approached and cornered plaintiff  
18 with an aggressive and hostile tone. She began the conversation by exclaiming: “OK, what is the  
19 fucking deal with you and your hat!”

20 36. Plaintiff was caught off-guard and by surprise, as the MAGA hat was in his car  
21 and had not been in the building, and as her tone was dramatically different from the day before.

22 37. For the next 15 minutes, Garrett—acting under color of state law, and acting as  
23 plaintiff’s new boss—repeatedly and aggressively berated plaintiff. Among other things, she  
24 declared that plaintiff was a “racist”, “bigot”, “homophobe”, “liar”, and “hateful person”.  
25

1 Plaintiff felt threatened, insulted and bullied, simply because he owned a hat of which Garrett  
2 disapproved.

3 38. Garrett concluded her verbal assault by telling plaintiff to get union representation  
4 because he “would need it” the next time they talked, thereby threatening discipline to plaintiff  
5 based solely on his political beliefs and speech.

6 39. The effects of Garrett’s attack were devastating to plaintiff. In addition to causing  
7 severe emotional distress, humiliation, and fear, Garrett’s attack caused plaintiff’s post-stroke  
8 symptoms to recur, wiping out his progress from rehab and immediately bringing back his verbal  
9 stutter and an inability to walk in a straight line.

10 40. As a result of these emotional and physical injuries, plaintiff has been unable to  
11 continue teaching for Evergreen and remains on an unpaid leave of absence from employment.

12 41. Plaintiff filed an internal complaint with Evergreen’s Human Resources  
13 department, including that Garrett violated Evergreen’s policies mandating civility and  
14 prohibiting harassment, intimidation, and bullying.

15 42. This HR complaint was managed by defendant Gomes, who along with  
16 Evergreen’s Superintendent Mike Merlino handled the investigation in a biased and unfair  
17 manner intended to support and protect Garrett to the detriment of plaintiff.

18 43. In fact, before plaintiff had even filed his complaint with HR, Gomes had already  
19 been communicating and working with Garrett to coordinate a response to the allegations and to  
20 ensure that plaintiff would not return to work at Wy’East.

21 44. Upon information and belief, Gomes, Garrett, and Merlino also conceived a plan  
22 to try to prevent plaintiff’s HR complaint from being investigated. Specifically, before the HR  
23 investigation was completed, Gomes blackmailed plaintiff in an effort to get him to drop his  
24 complaint against Garrett. Gomes told plaintiff that there had been a public records request filed  
25 related to his complaint (not filed by plaintiff) and threatened that if plaintiff did not immediately

1 drop his complaint, then she would be forced to turn over sensitive and private/personal  
2 information—including protected medical information—about plaintiff to the outside party who  
3 had made the records request. Plaintiff rejected the blackmail and advised Gomes to follow  
4 applicable laws in responding to any public records requests, including by withholding or  
5 redacting any protected information.

6 45. Gomes also used her position in other ways to try to harm plaintiff and end his  
7 employment. For example, in responding to plaintiff's requests for leave, Gomes repeatedly  
8 demanded the entirety of plaintiff's medical records from both primary care providers and  
9 specialists without any reasonable limitation on the scope of those medical records.

10 46. With regard to plaintiff's inquiries regarding benefits—which are typically  
11 handled by different HR staff members who manage benefits administration—Gomes prohibited  
12 any of those staff members from speaking with plaintiff; rather, Gomes insisted that she be the  
13 sole person to communicate with plaintiff going forward. Gomes then placed a series of  
14 roadblocks in front of every effort by plaintiff to obtain various benefits to which he was entitled,  
15 causing further harm to plaintiff.

16 47. Gomes advised plaintiff that Evergreen was hiring an “independent investigator”  
17 to look into the allegations. However, the “independent investigator” chosen by Gomes and  
18 Merlino was in fact Evergreen's own employment liability insurance program administrator—  
19 Clear Risk Solutions—and the investigation was conducted as part of the administrator's “pre-  
20 litigation program” designed to protect Evergreen's liability interests arising from HR  
21 complaints such as plaintiff's. The investigation was conducted in a biased manner to support  
22 the predetermined conclusion that plaintiff's HR complaint was unsubstantiated.

23 48. Unbeknownst to plaintiff at that time, Clear Risk Solutions had in the past five  
24 years conducted roughly 32 investigations on behalf of Evergreen and, out of those 32  
25



1 investigations, Clear Risk Solutions had not once rendered a written conclusion that the  
2 individual being investigated had violated an Evergreen policy.

3 49. When the investigation was completed, Gomes refused to share the investigator's  
4 report or findings to plaintiff. Instead, on October 1, 2019, Gomes sent to plaintiff only her own  
5 written summary report of the investigator's findings, which concluded that "an act of  
6 discrimination, harassment, intimidation and bullying [by Garrett] *did not occur*" and therefore  
7 closed plaintiff's HR complaint as unsubstantiated. (*Italics added.*) Gomes's report went on to  
8 assert that, in fact, the "preponderance of the evidence" showed that *plaintiff* was the one who  
9 made others uncomfortable (even though no HR complaint had been made or investigated  
10 against plaintiff).

11 50. Plaintiff subsequently met with Gomes and asked her again to share the  
12 investigator's reports and reconsider her decision, but Gomes rejected all of these requests. As a  
13 result, on October 30, 2019, pursuant to Evergreen's policies, plaintiff appealed Gomes's  
14 decision to Evergreen's elected board of directors. He also again requested copies of all relevant  
15 records, especially the actual records and reports from the "independent investigator". That  
16 same day, Evergreen changed plaintiff's leave status from "paid" to "unpaid".

17 51. In response, Evergreen scheduled the board's appeal hearing to occur on  
18 November 14, 2019—just two weeks out—but stonewalled the records request by providing  
19 multiple copies of records that were irrelevant or known to be already in plaintiff's possession,  
20 rather than any of the key records requested.

21 52. On November 14, 2019, plaintiff argued his appeal, but despite being informed  
22 about this misconduct by Garrett and Gomes, Evergreen's board refused to take any action to  
23 correct it. Defendant Gomes drafted the letter to plaintiff notifying him of the board's decision.

24 53. With regard to the investigator's documents, Evergreen inexplicably waited until  
25 November 8, 2019 (*i.e.*, just a few days before the hearing) to provide the investigator's 5-page

1 abridged report and until December 2, 2019 (*i.e.*, long after the hearing) to provide the  
2 investigator's full 18-page report, despite the fact that both reports were fully drafted and in  
3 Evergreen's possession by September 23, 2019.

4 54. Moreover, these reports demonstrated that Gomes's summary report from October  
5 1, 2019, had significantly misstated and distorted the actual findings made by the investigator.  
6 For example, Gomes's summary report omitted all references to the investigator's findings that  
7 were adverse to Garrett and/or Evergreen, such as Garrett's established and well-known history  
8 of pushing political statements and symbols in the school and permitting others holding similar  
9 political views as her to do so as well, thereby creating a "double standard" among the  
10 employees based on their personal political views.

11 55. Gomes's report further omitted reference to the finding that Garrett had been  
12 motivated to confront plaintiff on August 23, 2019 simply because he wore the MAGA hat.  
13 According to the investigator, Garrett herself admitted she had told plaintiff that "she did not  
14 want him wearing the hat anymore", whether at Wy'East, or at other schools, or even just "out  
15 there in the world" as a representative of her school.

16 56. In addition, the investigator's report made it clear that Gomes had falsely asserted  
17 that plaintiff had violated school district policies by a "preponderance of the evidence" by  
18 making others uncomfortable. To the contrary, the investigator explicitly found that plaintiff had  
19 *not* violated any of Evergreen's policies, including by wearing the MAGA hat.

20 57. The investigator further concluded that the plaintiff had "reasonably perceived"  
21 Garrett's statements to include "a threat of discipline" for wearing the hat, and that Garrett's  
22 conduct toward plaintiff "did have a negative substantial affect [sic] on Mr. Dodge."

23 58. Defendants' actions and misconduct in response to plaintiff's HR complaint—as  
24 summarized in Paragraphs 41 to 57—further created a hostile workplace, caused additional  
25

1 damage and harm to plaintiff, and made it impossible for plaintiff to reasonably or safely return  
2 to any form of employment with the school district.

3 **FIRST CLAIM FOR RELIEF**

4 **(First Amendment Retaliation; 42 U.S.C. §1983)**

5 **(Against All Defendants)**

6 59. Plaintiff hereby incorporates the allegations in Paragraphs 1 through 58 as if fully  
7 set forth here.

8 60. Defendants are each a “person” under 42 U.S.C. §1983.

9 61. As set forth above, defendants violated plaintiff’s constitutional right to freedom  
10 of speech under the First Amendment to the United States Constitution.

11 62. The actions of defendants were willful, intentional, and in reckless disregard of  
12 plaintiff’s constitutional rights.

13 63. Plaintiff has consequently suffered injury, harm, and damages.

14 64. Plaintiff’s damages include economic damages, including but not limited to lost  
15 wages, lost benefits, loss of future earnings capacity and benefits, and medical expenses;  
16 noneconomic damages, including but not limited to mental anguish, distress, humiliation,  
17 anxiety, pain and suffering, loss to reputation, embarrassment, and fear; and punitive damages, in  
18 amounts to be proven at trial.

19 65. Plaintiff is also entitled to prevailing plaintiff attorneys’ fees and costs under 42  
20 U.S.C. §1988 or as otherwise provided by law.

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23 ///

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**SECOND CLAIM FOR RELIEF**

**(Due Process; 42 U.S.C. §1983)**

**(Against All Defendants)**

**(Stated in the Alternative to Plaintiff's First Claim for Relief)**

66. Plaintiff hereby incorporates the allegations in Paragraphs 1 through 65 as if fully set forth here.

67. Alternatively to the First Claim for Relief, if any of the defendants' actions and misconduct toward plaintiff as set forth in Paragraphs 41 through 58, above, are found to be unrelated to plaintiff's exercise of his constitutional right to freedom of speech under the First Amendment, then such actions and misconduct constituted violations of plaintiff's constitutional right to substantive due process under the Fourteenth Amendment to the United States Constitution.

68. Plaintiff has consequently suffered injury and damages, as set forth above.

**THIRD CLAIM FOR RELIEF**

**(Outrage)**

**(Against All Defendants)**

69. Plaintiff hereby incorporates the allegations in Paragraphs 1 through 68 as if fully set forth here.

70. As set forth above, defendants engaged in extreme and outrageous conduct directed to plaintiff, which intentionally or recklessly inflicted emotional distress on plaintiff.

71. Plaintiff has consequently suffered severe emotional distress and damages, as set forth above.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff Eric Dodge respectfully prays for judgment to be entered granting him relief as follows:

- 1 A. Compensatory damages in an amount to be proven at trial;
- 2 B. Punitive damages in an amount to be proven at trial;
- 3 C. Prejudgment interest on any award of lost wages and lost benefits;
- 4 D. Plaintiff's reasonable attorneys' fees and costs under 42 U.S.C. §1988 or as
- 5 otherwise provided by law;
- 6 E. A declaration that defendants have committed the above violations of plaintiff's
- 7 civil rights; and
- 8 F. Such other and further relief as the Court may allow.

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands a jury trial on all questions so triable.

11

12 Dated this 27th day of August, 2020.

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24

25

**CERTIFICATE OF SERVICE**

I hereby certify that on August 27, 2020 I served a copy of **FIRST AMENDED COMPLAINT** on the following person(s) in the manner indicated below at the following address(es):

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